

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF HUMAN RIGHTS

State of Minnesota by
Velma Korbel, Commissioner,
Department of Human Rights,
Complainant,
and

Theresa Rinio, Laura Hegland,
Alicia Christensen, and Crystal Kory,
Intervenors,

**ORDER ON PETITION
TO INTERVENE**

v.

Checkered Flag, Inc. and
Michael Rodahl,
Respondents.

This matter is before Administrative Law Judge Steve M. Mihalchick on the Petition to Intervene in this matter submitted on March 9, 2006, on behalf of Theresa Rinio ("Rinio"), Laura Hegland ("Hegland"), Alicia Christensen ("Christensen"), and Crystal Kory ("Kory") (collectively "Petitioners"). Respondents Checkered Flag, Inc., and Michael Rodahl (collectively "Respondents") replied to the Petition, raising objections to the proposed intervention. The Department of Human Rights ("the Department") filed a letter of support for granting the intervention. The last filing on the Petition was received on March 15, 2006.

Erica Jacobson, Assistant Attorney General, 445 Minnesota Street, Suite 900, St. Paul, Minnesota 55101-2127, represents the Department. John S. Raboin, Raboin Law Firm, 7343 Wolda Road, Baxter, MN 56425, represents Respondents. Michael T. Milligan, Quinlivan & Hughes, P.A., P.O. Box 1008, St. Cloud, MN 56302, represents Petitioners.

Based upon the record in this matter, the Administrative Law Judge makes the following:

ORDER

1. The Petition to Intervene of Rinio, Hegland, Christensen, and Kory is GRANTED. Petitioners shall file a Complaint in Intervention within 20 days of

this Order and Respondents shall file an Answer thereto within 20 days of receipt.

2. Counsel for the Department and counsel for Petitioners will avoid duplication of discovery requests made of Respondents.

3. This Order does not address any potential introduction of any issue for which no probable cause was found by the Department.

4. This Order does not constitute an engagement of private attorneys by the Department and Petitioners are advised that attorney's fees for private attorneys may not be available under Minn. Stat. § 363A.29, subds. 4 or 11.

Dated: April 4, 2006.

/s/ Steve M. Mihalchick
STEVE M. MIHALCHICK
Administrative Law Judge

MEMORANDUM

The Petitioners have each filed a charge under the Minnesota Human Rights Act (Minn. Stat. Chap. 363A, also know as the "MHRA"). The Petitioners are seeking compensatory and punitive damages arising from alleged conduct asserted to be sexual harassment in the workplace. The Department found probable cause to believe that the MHRA had been violated and initiated this proceeding.

In accordance with the MHRA, the Office of the Attorney General (OAG) has provided the legal representation for the Department.¹ The Petitioners have requested to intervene individually in this matter, asserting the Department's interests are sufficiently different from those of the Petitioners to support the inclusion of Petitioners in this proceeding as parties in their own right. Respondents objected to allowing this intervention, asserting that Petitioners' interests are "fully protected by the State of Minnesota."² Respondents also assert that allowing intervention would permit a duplication of effort and "potential duplication of attorney fees."³

Regarding counsel in contested cases, the MHRA addresses the role of the OAG as between counsel for the Department and Charging Parties, stating:

¹ Minn. Stat. § 363A.32, subd. 1.

² Defendant's Objection, at 1.

³ *Id.*

Subdivision 1. **Attorney general; privileged communication.** The attorney general shall be the attorney for the department. When a matter has been referred to the attorney general by the commissioner after a finding of probable cause or for the purpose of interim relief, communications between members of the attorney general's office and charging parties or members of a class formed pursuant to section 363A.28, subdivision 6, clause (6), are privileged as would be a communication between an attorney and a client.⁴

This language requires the OAG to represent primarily the Department. However, the Department is seeking actual damages, punitive damages, and attorneys' fees to be paid to the Petitioners. There is overlap between that and the remedies Charging Parties apparently seek by their intervention. Moreover, the OAG will unquestionably represent the Petitioners interests more than adequately. Nonetheless, Petitioners certainly have the right to retain their own counsel. And the interests of the Department and Petitioners are not identical. Therefore, the Petition should be granted.

In support of intervention, Petitioners raised the issue of Christensen's constructive discharge claim, for which no probable cause was found. Petitioners maintained that this issue could be addressed at the hearing, pursuant to Minn. Stat. § 363A.33, subd. 2. This Order does not address this issue, as it is not necessary to or dispositive of the issue of intervention. It may be addressed after the Complaint in Intervention and Answer are filed.

Respondents expressed concern over the duplication of effort and potential duplication of attorney's fees. There is potential for duplication of effort and creation of unreasonable burdens upon Respondents in discovery and during the hearing. Counsel are instructed to avoid that where possible. Any award of attorney's fees under the MHRA in a contested case proceeding appears to be governed by Minn. Stat. § 363A.29, subd. 11. Granting the Petition to Intervene in this Order does not constitute the Department engaging counsel for Petitioners.

S.M.M.

⁴ Minn. Stat. § 363A.32, subd. 1.